

ATTACHMENT 1

Summary of Major Elements of the Master Agreement for the Comprehensive Everglades Restoration Plan

1. **Intent**: The Master Agreement establishes a framework of uniform terms and conditions that will be incorporated by reference into future Project Partnership Agreements for construction, operation, maintenance, repair, replacement and rehabilitation of projects in the Comprehensive Everglades Restoration Plan (CERP). The SFWMD and the U.S. Army Corps of Engineers (Corps) mutually agreed that establishment of uniform terms and conditions and a “Model” (template) for future Project Partnership Agreements will expedite development and ensure programmatic consistency of future Project Partnership Agreements.
 - a) The Master Agreement provides for the potential of modifying the terms and conditions for a particular CERP project, as necessary, and specifies that these modifications will be incorporated into the specific Project Partnership Agreement.
2. **Mutuality**: The Master Agreement is a significant departure from the Corps’ traditional project cooperation agreements in that it reflects much more of a partnership between the signatory parties. For example, contrary to the Corps’ typical agreements which specify that project decisions and determinations will be made unilaterally by the Corps, the Master Agreement specifies that the Corps and SFWMD will make joint decisions on key issues and will jointly develop and approve CERP documents and schedules. Examples of joint SFWMD-Corps decisions or approvals in the Master Agreement include:
 - a) Determination that a project is “operational” before transfer to the SFWMD for long-term operations, maintenance, repair, replacement and rehabilitation (OMRR&R). [Article I(F)]
 - b) Determination of what constitutes a “functional portion of an authorized CERP project” for the purposes of transferring a completed portion of a project to the SFWMD for OMRR&R. [Article I(F)]
 - c) Determination of the appropriate adjustments to construction work assignments between the Corps and SFWMD and/or adjustments to schedules that are necessary to maintain the 50-50 cost-share balance and avoid the requirement for a cash contribution.
 - d) Determination of the land interests, improvements and relocations that are required for construction, operation and maintenance of a project. [Article III(A)-(C)]
 - e) Development and approval of a 5-year OMRR&R Plan for CERP that will be used by the Corps and SFWMD for development of future fiscal year budgets.
 - f) Development and approval of Project Operating Manuals, System Operating Manuals and Project Maintenance, Repair, Replacement and Rehabilitation Manuals for each

project.

3. **Dispute Resolution:** If disputes arise during implementation of a CERP project, including any of the collaborative decisions listed in #2 above and any dispute with one of the Parties' performance, the Parties agree to employ the Dispute Resolution Agreement signed by the Department of the Army, the State of Florida and SFWMD, dated September 9, 2002 for resolution of the dispute. This Dispute Resolution Agreement elevates disputes within the Department of the Army and the State of Florida on a parallel level, if necessary, up to the Secretary of the Army and Governor of Florida. Once the dispute resolution process has been completed, the Agreement allows for the parties to avail themselves of any remedies available at law or equity. [Article VII]
4. **Transfer of a Project or a Functional Portion of a Project to the SFWMD for Long-Term Operations, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R):** Before being turned over to the SFWMD for OMRR&R [Article II(I)]:
 - a) Each project or functional portion of a project must successfully complete an "Operational Testing and Monitoring Period" to demonstrate that the project is operating as designed. The Master Agreement requires that the duration of the Operational Testing and Monitoring Period for future projects be specified in the Project Implementation Report.
 - b) Before transfer of the features to the SFWMD for OMRR&R, the Parties will jointly determine that the project is "operational", which is defined to mean:
 - i. Construction of the project is physically complete;
 - ii. The project has completed an Operational Testing and Monitoring Period;
 - iii. The project features meet applicable design and construction standards;
 - iv. The project is operating as designed and in accordance with applicable permit conditions and operational manuals; and
 - v. The Project Operating Manual, MRR&R Manuals, System Operating Manual and as-built drawings have been finalized and provided to SFWMD. [Article I(H)]
5. **Cost-sharable Expenses for Project Construction Costs:** In addition to SFWMD's expenditures for real estate, construction and construction management activities, cost-sharable project construction cost expenditures under future Project Partnership Agreements will include:
 - a) Environmental site assessments to identify existence and extent of hazardous substances on project lands
 - b) Interim operations during the Operational Testing and Monitoring Period
 - c) Preparation and processing of applications for any federal, state or local permits required for operations and maintenance, as well as activities necessary to comply with such permits to the extent that such fees would apply if the Corps was the

applicant

- d) Incidental costs associated with land acquisition (surveys, appraisals, title insurance, legal fees, etc.)
- e) The costs of monitoring and vegetation management during the period of construction that the SFWMD and Corps agree in writing are necessary to achieve project benefits

[Article I(D) sets forth some examples listed above]

6. **Cost-sharable Expenses for Project Operations, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) Costs:** In addition to routine equipment operations and maintenance costs, cost-sharable project OMRR&R costs include:

- a) The cost of monitoring after construction that the SFWMD and Corps agree in writing is necessary and is included in the Maintenance, Repair, Replacement and Rehabilitation Manual
- b) The cost of vegetative management after construction that the SFWMD and Corps agree in writing is necessary to maintain project benefits and is included in the Maintenance, Repair, Replacement and Rehabilitation Manual.

[Article I(E) sets forth some examples listed above]

7. **Land Valuation and Crediting:** The process for valuation and crediting of real estate interests provided by the SFWMD for CERP will be the same regardless of whether the real estate interests are acquired directly by the SFWMD or are acquired by the State of Florida or another Florida governmental entity and provided to the SFWMD through a Cooperative Agreement between the SFWMD and the governmental entity that owns title to the lands:

- a) For Indian River Lagoon, Picayune Strand and Site 1 Impoundment Projects, real estate interests will be valued and credited as defined in the Project Implementation Report and/or Chief of Engineers' Report. While the Picayune Strand Restoration Project has some variations, the crediting for these projects will be as follows:
 - i) If real estate interests are acquired before signing a Project Partnership Agreement, the SFWMD will receive credit for the actual acquisition costs of the real estate interest, plus the incidental costs of acquisition (e.g., surveys, appraisals, title searches, attorney fees, etc.).
 - ii) If the real estate interests are acquired after signing a Project Partnership Agreement, the SFWMD will receive credit for the fair market value of the real estate interest on the date of acquisition, plus the incidental costs of acquisition.
- b) For all future CERP Projects, real estate interests will be valued and credited in accordance with the Corps' national land valuation and crediting policy:
 - i) If real estate interests are acquired before signing the Project Partnership Agreement and the Corps performs construction, the SFWMD will receive credit for the fair market value of the real estate interests on the date that the

lands are certified to the Corps for construction, plus the incidental costs of acquisition.

- ii) If real estate interests are acquired before signing the Project Partnership Agreement and the SFWMD performs construction before signing the Project Partnership Agreement, the SFWMD will receive credit for the fair market value of the real estate interests on the date the Project Partnership Agreement is signed, plus the incidental costs of acquisition.
- iii) If real estate interests are acquired before signing the Project Partnership Agreement and the SFWMD performs construction after signing the Project Partnership Agreement, the SFWMD will receive credit for the fair market value of the real estate interests on the date the SFWMD awards the construction contract that requires the real estate interests, plus the incidental costs of acquisition;
- iv) If real estate interests are acquired before signing the Project Partnership Agreement and are not required for construction, but are required for operations and maintenance of the project, the SFWMD will receive credit for the fair market value of the real estate interests on the date the SFWMD provides the Corps with land certification documents for the required real estate interests, plus the incidental costs of acquisition; and
- v) If the real estate interests are acquired after signing a Project Partnership Agreement, the SFWMD will receive credit for the fair market value of the real estate interests on the date of acquisition, plus the incidental costs of acquisition.

[Article IV sets forth the requirements outlined above]

8. Limitations on Credit: Credit afforded by the Corps for SFWMD's "In-kind Work" expenditures will be subject to the following limitations:

- a) Corps must certify that the SFWMD's construction:
 - (i) is integral to the authorized CERP Project, which will be determined prior to signing the Project Partnership Agreement;
 - (ii) was implemented in accordance with Federal standards and applicable Federal and State laws; and
 - (iii) costs are necessary, reasonable, allowable, allocable and auditable
- b) The amount of credit afforded to the SFWMD will not include interest payments and will not be adjusted to reflect changes in price levels between the time the work is completed and the time credit is afforded.
- c) Credit will not be provided for work completed by the SFWMD using funds provided by another Federal agency, or any matching funds required, unless the Federal agency providing such funds verifies in writing that affording credit for such work is expressly authorized by Federal law.

[Article VI sets forth the requirements outlined above]

9. Monitoring and Managing the 50-50 Cost-Share Balance:

- a) Master Agreement establishes the basis for “programmatic” management of the 50-50 cost-share between Corps and SFWMD, which will involve monitoring and managing the cost-share balance for all CERP Projects with executed Project Partnership Agreements rather than balancing the cost-share for each individual Project Partnership Agreement.
- b) The programmatic cost-share monitoring and management approach will provide greater ease in cost accounting, limit the necessity for cash payments and provide greater flexibility for sharing project construction responsibilities. For example, this will allow SFWMD to purchase lands and perform construction on one project (thereby funding a large percentage of the project cost) and carry over excess credits to another project where the Corps performs construction.
- c) In an effort to maintain the cost-share balance at 50-50, the Corps and SFWMD will conduct yearly reviews of actual expenditures through the previous year and projected contributions for the current and next fiscal years. When necessary, adjustments will be made for future years to balance the cost-share by: changing construction work assignments between the Corps and SFWMD; providing federal funding for real estate acquisition; re-scheduling of construction activities; re-scheduling of Project Partnership Agreement executions; and if necessary, providing SFWMD cash contributions to the Corps.
- d) At the time of executing a Project Partnership Agreement, the SFWMD will receive a projected contribution credit toward its 50% cost-share that is equal to:
 - (i) The estimated cost of all real estate required for the project, including lands not yet purchased;
 - (ii) the funds expended by SFWMD on early construction completed under a Pre-Partnership Credit Agreement; and
 - (iii) the funds obligated by SFWMD under a construction contract for work identified an executed Project Partnership Agreement, even if the work will be completed over a multi-year timeframe.Recognition of the SFWMD’s projected contributions by the Corps will significantly reduce the probability of SFWMD being required to make cash contributions to maintain the 50-50 cost-share balance for CERP.
- e) The SFWMD will not be required to provide a cash contribution until the total of the Federal government’s expenditures and obligations for construction-related costs for all CERP projects with executed Project Partnership Agreement plus total design costs under the Design Agreement exceeds the total of the SFWMD’s actual expenditures and SFWMD’s projected contributions for land acquisition and construction-related costs for all CERP projects with executed Project Partnership Agreement plus total design costs under the Design Agreement.

10. Operations, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) Responsibilities:

- a) SFWMD will be responsible for performing all OMRR&R work.
- b) Corps will provide 50% of the annual funding after reviewing invoices provided by the SFWMD.
- c) Cost share must be maintained at 50-50 in each fiscal year because Corps does not have authority to carry over excess SFWMD expenditures as credit to a subsequent year. Consequently, the annual OMRR&R budget will be limited by the amount of funds Congress appropriates to the Corps each year.
- d) SFWMD and Corps will jointly develop 5-Year OMRR&R Plan, as well as Annual OMRR&R Work Plans to reflect available funding.
- e) SFWMD will provide Corps an opportunity to review and comment in writing on solicitations for all CERP O&M contracts prior to issuance of contract solicitation, and will provide Corps with opportunity to participate on contractor selection teams.

[Article IX sets forth the requirements outlined above]

11. Collaboration on Contract Solicitations for Construction Services:

- a) During contract solicitations for construction services, Corps and SFWMD agree to allow each other the opportunity to review Scopes of Work before release.
- b) Parties agree to provide opportunity for joint participation on technical evaluation teams for contractor selection.
- c) Parties agree to provide opportunity to review contracts and contract modifications prior to execution.

12. Quality Control and Quality Assurance: The SFWMD and Corps will establish a Project Quality Assurance Coordination Team for each project whose primary responsibility will be to jointly oversee quality assurance and quality control during construction. The Master Agreement limits the programmatic staffing level of this effort (for the non-constructing party) to a maximum cumulative cost of seven full-time equivalent staff in any one year. [Article V(D)]

13. Assessment and Remediation of Hazardous Materials: Costs for investigations necessary to identify existence and extent of hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) will be cost-shared. However, if CERCLA-regulated substances are found on lands needed for project construction or operation, parties will determine whether to initiate or proceed with construction. If parties agree to proceed, the SFWMD will be responsible for 100% of the costs of cleanup and response to contamination unless the specific Project Partnership Agreement for a Project specifies that clean up costs will be cost shared. [Article XV]

14. Responsibility for Warranty Management and Correction of Design or Construction

Defects: The party responsible for construction is responsible for addressing all contractor-related design, construction or warranty issues.

15. Termination or Suspension: Once the dispute resolution process has been exhausted, the Corps may terminate a Project Partnership Agreement if the SFWMD does not fulfill its obligations under the Agreement. In the event that the Corps notifies the SFWMD of an insufficiency of Corps funds for either the current fiscal year or upcoming fiscal year to meet the Federal share of project construction costs, the Corps is required to suspend performance once available funds are exhausted. Both the Corps and the SFWMD have the right to terminate a Project Partnership Agreement in the event of a suspension of the project due to lack of Federal funding. [Article XVI]

16. Indemnification: As required by Federal law, the SFWMD agrees to indemnify the Corps with respect to damages during project construction and OMRR&R except for damages that are due to the negligence or fault of the Corps or its contractors.

17. Obligations of Future Appropriations: Financial commitments of the parties to be made under Project Partnership Agreements are subject to future year appropriations by each party. Each party commits to use its best efforts to obtain appropriations to pay its share of project construction and OMRR&R costs, consistent with applicable laws and rules. [Article XX]